



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated June 23, 2021, which reads as follows:

“G.R. No. 236592 (*People of the Philippines v. Dindo R. Abunda*). - On appeal is the September 22, 2017 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01481-MIN, which affirmed the June 15, 2015 Decision² of the Regional Trial Court (RTC), Branch 34, Panabo City in Criminal Case No. CRC 474-2009, finding accused-appellant Dindo R. Abunda (Dindo) guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the “Comprehensive Dangerous Drugs Act of 2002”.

Antecedents:

In an Information³ dated December 11, 2009, Dindo was charged with violation of Section 5, Article II of RA 9165 which alleged:

That on or about November 28, 2009, in the City of Panabo, Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and knowingly traded, sold and delivered two (2) sachets of methamphetamine hydrochloride otherwise known as “shabu”, a dangerous drug, to PO1 ABNERA. AMING who was acting as a poseur buyer in a legitimate buy bust operation after taking and receiving one (1) marked monecy of Five Hundred peso bill (₱500.00) with Serial Number XB816689.

CONTRARY TO LAW.⁴

Upon Dindo’s refusal to enter a plea, the trial court directed, in an Order⁵

¹ *Rollo*, pp. 3-16; penned by Associate Justice Ruben Reynaldo G. Roxas and concurred in by Associate Justices Romulo V. Borja and Oscar V. Badelles.

² *CA rollo*, pp. 59-75; penned by Presiding Judge Dax Gonzaga Xenos.

³ Records, p.1.

⁴ *Id.*

⁵ *Id.* at 92-93.

dated September 17, 2010, that a plea of “not guilty” be entered in the records.⁶ Trial on the merits thereafter ensued.

Senior Police Office 1 Abner A. Aming (SPO1 Aming), SPO1 Romeo M. Obero (SPO1 Obero), Police Chief Inspector Virginia S. Gucor (PCI Gucor), SPO1 Rodolfo H. Montoya (SPO1 Montoya), and SPO2 Casimiro C. Camomot (SPO2 Camomot) testified for the prosecution. The defense, on the other hand, presented the accused, Elna Abunda (Elna), and Emmanuel Abunda (Emmanuel).

Version of the Prosecution:

At around 9:00 p.m. of November 28, 2009, the Philippine National Police (PNP) Station in Panabo City conducted a meeting which was attended by SPO1 Aming, PO3 Camomot and Senior Inspector (S/Insp.) Arnold Ongachon after they received information that someone was selling drugs in Purok Okra, Panabo City.⁷ SPO1 Aming was designated as the poseur-buyer while PO3 Camomot acted as his back up.⁸ A P500.00 bill marked money was prepared.⁹ Thereafter, SPO1 Aming, together with the operatives of PNP Panabo City, immediately proceeded to Purok Okra, Brgy. Gredu, Panabo City.¹⁰

When they arrived at the target area, SPO1 Aming surveilled the place while the rest of the team positioned themselves at the nearby gasoline station.¹¹ SPO1 Aming saw Abunda outside his house handling to a bystander an object wrapped in a newspaper which he believed to be a *shabu*.¹² Thereafter, SPO1 Aming approached Abunda and told the latter that he wants to buy a P500.00 worth of *shabu*. Abunda agreed and thereafter went inside his house. When he came back, Abunda handed two (2) sachets to SPO1 Aming.¹³ In turn, SPO1 Aming handed to Abunda the marked money. Thereafter, SPO1 Aming declared that he is a police officer. A commotion suddenly ensued when Abunda refused to be arrested.¹⁴ Thereafter, they brought Abunda to the Panabo Police Station to report the incident.¹⁵

The confiscated items were then turned over to PO3 Montoya who was the investigator on duty at that time.¹⁶ PO3 Montoya then placed the confiscated items inside his drawer.¹⁷ Thereafter, he prepared a Chain of Custody which was signed by SPO1 Aming and PO3 Camomot.¹⁸ The two

⁶ Id. at 90.

⁷ TSN, June 22, 2010, pp. 5-6.

⁸ Id. at 10.

⁹ Id.

¹⁰ Id. at 20.

¹¹ Id. at 22.

¹² Id. at 23.

¹³ Id. at 24-25.

¹⁴ Id. at 25.

¹⁵ Id. at 25-26.

¹⁶ Id. at 27.

¹⁷ TSN, August 5, 2011, p. 7.

¹⁸ Id. at 9.

sachets were then placed by PO3 Montoya inside a big transparent cellophane.¹⁹

In the morning of the following day, the inventory was conducted in the presence of the representatives from the media, Philippine Drug Enforcement Agency (PDEA), Department of Justice (DOJ), and barangay.²⁰ After the conduct of the inventory, the confiscated items remained in the custody of PO3 Montoya and were only delivered to the crime laboratory on December 1, 2009²¹ or two (2) days after their seizure. It was received by SPO1 Romeo M. Obero (SPO1 Obero) who thereafter gave it to PCI Gucor, the forensic chemical officer.

The confiscated sachets of *shabu* were then examined and tested positive for the presence of methamphetamine hydrochloride as shown in the Chemistry Report No. D-077-2009.²²

Version of the Defense:

Abunda testified that on November 28, 2009, at around 7:00 p.m., he was alone at his house.²³ When his wife arrived, he told the latter that his brother Emmanuel will come for a visit and that they are going to have a drinking spree.²⁴ When Emmanuel arrived, they went to the terrace of his house where they started drinking.²⁵

At around 10:00 p.m., he noticed vehicles parked outside of his house with uniformed men on board.²⁶ Curious of what is happening, he immediately went out. Suddenly, three policemen pulled him out of the gate. However, he resisted²⁷ and when the policemen lost their grip on him, they fired warning shots. He was thereafter mauled by the police officers.²⁸ Thereafter, he and his brother Emmanuel were boarded to the mobile patrol and brought to the police station.²⁹

Ruling of the Regional Trial Court:

The RTC, in its Decision³⁰ dated June 15, 2015, found Dindo guilty beyond reasonable doubt of the offense charged. The dispositive portion of the RTC Decision reads:

¹⁹ Id. at 15.

²⁰ Id. at 20.

²¹ Id. at 24-25.

²² Records, p.6.

²³ TSN, September 5, 2014, p.4.

²⁴ Id. at 5.

²⁵ Id. at 8.

²⁶ Id. at 11.

²⁷ Id. at 13-15.

²⁸ Id. at 15.

²⁹ Id. at 19.

³⁰ CA rollo, pp. 59-75.

WHEREFORE, judgment is hereby rendered finding accused *Dindo R. Abunda* guilty beyond reasonable doubt of violating Section 5 of Republic Act No. 9165. Accordingly, he is sentenced to suffer the penalty of *life imprisonment* and to pay a fine of ₱500,000.00.

In the service of his sentence, accused is entitled to the full credit of his preventive imprisonment pursuant to the provisions of Art. 29 of the Revised Penal Code. Accused shall serve his sentence at the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte.

The *two (2) sachets of shabu* are hereby ordered confiscated and forfeited in favor of the government though the PDEA subject to destruction by the latter in accordance with existing laws and regulations. In connection thereto, PDEA Regional Office XI, Davao City is directed to assume custody of the subject drugs for its proper disposition within *ten (10) days* from notice.

SO ORDERED.³¹

The RTC ruled that the prosecution has sufficiently established the sale of the dangerous drugs. Moreover, non-compliance with Section 21, Article II of RA 9165 is not necessarily fatal to the prosecution's case as long as the integrity and the evidentiary value of the seized items are duly preserved. The RTC upheld the presumption of regularity in the performance of official duties by the police officers involved in this case. It further ruled that the accused-appellant failed to present any clear and convincing evidence why the presumption should be overturned. Lastly, with respect to the accused's claim of unjustified and illegal arrest, the RTC held that the same cannot overcome the positive declarations of the police officers especially when they have not shown to be actuated by ill will or false motive.

Aggrieved, Dindo appealed his conviction before the CA.

Ruling of the Court of Appeals:

In its assailed September 22, 2017 Decision,³² the appellate court affirmed the trial court's Decision finding Dindo guilty of violation of Section 5, Article II of RA 9165. It ruled that the prosecution was able to establish beyond moral certainty the essential elements of illegal sale of dangerous drugs. Furthermore, it sustained the trial court's decision that the apprehending team properly preserved the integrity and evidentiary value of the seized items despite non-compliance with Section 21 of RA 9165. The appellate court upheld the presumption of regularity in the performance of official duties by the police officers involved in this case; it held that their testimonies deserved full faith and credence as there was no showing that they were inspired by improper motive.

Thus, the dispositive portion of the CA Decision reads:

³¹ Id. at 74-75.

³² *Rollo*, pp. 3-16.

WHEREFORE, foregoing premises considered, the instant appeal is **DENIED**. The Decision dated June 15 2015 by the Regional Trial Court, 11th Judicial Region, Branch 34, Panabo City is hereby **AFFIRMED**.

SO ORDERED.³³

Hence, the instant appeal.

Issue

Whether or not the CA correctly found Dindo guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165.

Our Ruling

The appeal is meritorious.

In the prosecution of illegal sale of dangerous drugs, it is the dangerous drug itself that forms part of the *corpus delicti* of the offense. Thus, the integrity of the *corpus delicti* must be established with moral certainty through an unbroken chain of custody.

In this case, Dindo contends that the procedures laid down in Section 21 of RA 9165 were not strictly complied with which consequently compromised the integrity of the evidence presented against him.

Section 21 of RA 9165, before its amendment, outlined the procedure which the apprehending team must comply in handling the seized drugs in order to preserve its integrity and evidentiary value. The pertinent portion of Section 21 reads:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

x x x x

³³ Id. at 15.

In addition, Section 21(a) of the Implementing Rules and Regulations of RA 9165 expressly provides:

SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

x x x x

Moreover, *People v. Siaton*³⁴ lists the links in the chain that need to be established by the prosecution, to wit:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.³⁵

Contrary to the findings of the courts below, We hold that the prosecution failed to establish that the apprehending team complied with the rule on chain of custody. It was not shown that the dangerous drugs were inventoried and photographed at the site of the seizure and arrest in the presence of accused-appellant, a representative of the media, a representative of the Department of Justice (DOJ), and any elected public official. The records show that SPO1 Aming marked the big white transparent cellophane containing the two sachets allegedly seized from Dindo at the Panabo Police Station and not at

³⁴ 789 Phil 87 (2016).

³⁵ *Id.* at 98-99.

the place of operation. Moreover, PO3 Montoya merely prepared an index card describing the said seized drugs which was thereafter signed by SPO1 Aming and PO3 Camomot likewise at the Panabo Police Station. The incontrovertible facts show that no marking or inventory of the seized drugs was conducted at the site of arrest. Worse, the inventory was prepared the day following their seizure and were submitted to the crime laboratory two days hence or only on December 1, 2009. The buy-bust team's explanation that they had to forego with the inventory on the day of the arrest and conduct it on the next day since it was already late at night and they had a hard time contacting the required witnesses fails to persuade.

To stress, the buy-bust team had ample time and opportunity to summon the insulating witnesses considering that the buy-bust operation is, by its nature, a planned activity.³⁶ During trial, PO3 Montoya effectively admitted to this lapse when he testified as follows:

Q: Why was it late at night, what happened next after the preparation that you did?

A: After all the preparation [PO1] Aming and [PO3] Camomot went home I already kept the two sachets of shabu inside the plastic cellophane, sir.

Q: How safe is your drawer?

A: It has a padlock and it has also a key in the locker, sir.³⁷

x x x x

Q: Before you go to the following day what you did on that day what time did you report for duty on November 28?

A: I did not have a break that time because unless you file the case you should not take a break we only rest for a while and return for work, sir.³⁸

x x x x

Q: In the morning of the following day as you said you have various representatives to sign, what was signed by [these] representatives?

A: Inventory, Your Honor.

Q: In other words, the inventory was done the following morning of the following day?

A: Yes, Your Honor.³⁹

x x x x

Q: Can you explain to us briefly why the inventory of that seized property was conducted the following day?

A: It was already very late that night [and] I still have to contact the members of the media, members of the DOJ, and the PDEA, we decided to just do the inventory the following day, sir.

³⁶ *People v. Tomavis*, G.R. No. 228890, April 18, 2018.

³⁷ TSN, August 5, 2011, p. 19.

³⁸ *Id.* at 20.

³⁹ *Id.*

Q: What is your explanation that you have a hard time to contact a representative of the media?

A: It is very difficult to contact members of the media but we have a friend from the media in Panabo City, sir.⁴⁰

The omissions above noted clearly indicate that the prosecution failed to establish any justifiable ground to warrant the non-observance of the mandatory requirements set under Section 21 of RA 9165. In *People v. Musor*⁴¹ We enunciated that:

Section 21, paragraph 1 of RA 9165 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. Further, the inventory must be done in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable that the IRR allows the inventory and photographing at the nearest police station or the nearest office of the apprehending officer/team. **This also means that the three required witnesses should already be physically present at the time of apprehension** — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. In other words, the buy-bust team has enough time and opportunity to bring with them said witnesses.

Moreover, **while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with.** The reason is simple: it is at the time of arrest — or at the time of the drugs’ “seizure and confiscation” — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.⁴²

Considering the foregoing, it is clear that the prosecution’s deviation from the procedure outlined in Section 21 of RA 9165 was unjustified. In view of such unwarranted departure from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the *corpus delicti* have been compromised, which consequently warrants accused-appellant’s acquittal.

WHEREFORE, the appeal is hereby **GRANTED**. The assailed September 22, 2017 Decision rendered by the Court of Appeals in CA-G.R. CR-IIC No. 001481-MIN is **REVERSED** and **SET ASIDE**. Accused-appellant Dindo R. Abunda is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered

⁴⁰ Id. at 20-21.

⁴¹ G.R. No. 231843, November 7, 2018.

⁴² Id.

immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished the Director General, Bureau of Corrections, Muntinlupa City, for immediate implementation. Furthermore, the Director General of the Bureau of Corrections is **DIRECTED** to report to this Court the action he has taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED.”

By authority of the Court:

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
7/6/21

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8105 Davao del Norte
(Crim. Case No. CrC-474-2009)

The Director General
BUREAU OF CORRECTIONS
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The Superintendent
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